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Cross-Defendant CHURCH OF SCIENTOLOGY
8 INTERNATIONAL

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
INTERNATIONAL, a California not-)
13 for-profit religious corporation;)
14 Plaintiffs,)
15 vs.)
16 GERALD ARMSTRONG; MICHAEL WALTON;)
et al.,)
17 Defendants.)
18 _____)
19 GERALD ARMSTRONG,)
20 Cross-Complainant,)
21 vs.)
22 CHURCH OF SCIENTOLOGY) DATE: March 25, 1994
INTERNATIONAL, a California) TIME: 9:00 a.m.
23 Corporation; DAVID MISCAVIGE;) DEPT: 1
DOES 1 to 100;)
24 Cross-Defendant.)
_____)
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1 I.

2 INTRODUCTION

3 In fifteen pages of vitriol, lifted nearly verbatim from his
4 first amended cross-complaint, Armstrong has failed to explain to
5 this Court why, when he is already litigating these issues in Los
6 Angeles Superior Court, he has any need whatsoever to burden this
7 Court with those same issues. Indeed, Armstrong's cross-complaint,
8 first amended cross-complaint, and opposition to demurrer should be
9 recognized by this Court for what they are: a frivolous attempt to
10 prejudice the Court against plaintiff Church of Scientology
11 International ("the Church"). If there is an abuse of process to be
12 complained of, it is Armstrong's attempt to fill the records of this
13 Court with venom directed at his former religion, for no conceivable
14 purpose beyond the creation of prejudice.

15 Armstrong argues that his abuse of process claims are not barred
16 by the statute of limitations, citing no California law to support
17 his theory. He is in error. California law bars his complaint.
18 Further, each and every one of the matters which he complains of that
19 face the statute's bar are also alleged in his Los Angeles action.
20 The pendency of that litigation thus bars his cross-complaint as
21 well.

22 Armstrong's claim that he can maintain an abuse of process claim
23 simply because the Church filed the complaint herein for fraudulent
24 conveyance is also a misstatement of California law. The California
25 Supreme Court has held directly to the contrary.

26 Finally, Armstrong offers no support for his single-sentence
27 argument that "declaratory relief is imperative." The interpretation
28 and enforcement of the settlement agreement between these parties is

1 being litigated, fully and in a single action, in Los Angeles.¹
2 These are not issues which are, or should be, before this Court.

3 II.

4 ARMSTRONG'S ATTACK ON THE CHURCH, HIS FORMER LAWYER, AND THE
5 SETTLEMENT AGREEMENT ITSELF MERELY REPEAT ALLEGATIONS WHICH ARE
6 BEING LITIGATED IN THE LOS ANGELES ACTION

7 Armstrong makes almost no effort to respond to the Church's
8 powerful argument, contained in the moving papers, that the matters
9 contained in the first amended cross-complaint are all fully alleged
10 in a cross-complaint filed by Armstrong in the presently pending Los
11 Angeles action. In his introduction, he informs the Court that his
12 response to this argument is that "his complaint that the underlying
13 lawsuit constitutes an abuse of process cannot be the subject of
14 litigation previously existing." [Oppo. at 1] The "underlying
15 complaint," of course, is plaintiff's claim that Armstrong, in August
16 of 1990, fraudulently conveyed assets which he valued at more than
17 1.5 million dollars, and then began systematically breaching a
18 settlement agreement with the Church which contained a liquidated
19 damages clause requiring him to pay the Church \$50,000 for each such
20 breach.²

21 ¹ On October 6, 1993, the two Los Angeles actions for breach of
22 contract were ordered consolidated. On March 14, 1994, the Court
23 granted the Church's motion to amend its complaint, and ordered
24 that the two complaints be consolidated into a single complaint as
25 part of that amendment.

26 ² Contrary to Armstrong's claims that the agreement seeks to
27 "obstruct justice" or "destroy evidence" in some fashion, the
28 breaches which form the basis for the monetary judgment that the
Church expects to receive from Armstrong are breaches of
Armstrong's agreement not to write books, screenplays or articles
about his claimed experiences, not to give media interviews, public
speeches, etc. See Ex. 1 to Second Request for Judicial Notice,
Church of Scientology International v. Gerald Armstrong, Los Angeles Superior Court Case No. 084642, the
second, fourth, fifth and sixth causes of action.

1 The bulk of Armstrong's cross-complaint, however (and the bulk
2 of his opposition), does not even mention this claimed "abuse of
3 process," but instead focuses on stale claims from as early as 1986,
4 all of which are alleged in Armstrong's Los Angeles action, and
5 barred by the statute of limitations [See Part III, infra]. Indeed,
6 Armstrong insists that the "gravamen" of his cross-complaint is not
7 that plaintiff supposedly abused process by filing a complaint in
8 this Court, but that plaintiff's lawyers, in 1986, supposedly
9 "engineer[ed] the subversion" of Armstrong's then-lawyer, Michael
10 Flynn. [Oppo. at 11] This stale claim is already the object of
11 Armstrong's Los Angeles cross-complaint [Plaintiff's First Request
12 for Judicial Notice, Ex. 1, at ¶¶ 14 - 20], and of plaintiff's
13 pending motion for summary adjudication [Id., Ex. 4, 5, at 7]. There
14 is no reason to re-litigate it here.³ According to C.C.P. §
15 430.10(c) demurrer is proper when, "[t]here is another action pending
16 between the same parties on the same cause of action," because the
17 first suit affords an ample remedy, rendering the second action
18 unnecessary and vexatious. National Auto. Ins. Co. v. Winter (1943)
19 58 Cal.App.2d 11, 16, 136 P.2d 22, 25.

20 III.

21 **ARMSTRONG'S ABUSE OF PROCESS CLAIM IS BARRED BY**
22 **THE STATUTE OF LIMITATIONS AND THE LITIGANT'S ABSOLUTE PRIVILEGE**

23 Armstrong's amended cross-complaint, in its entirety, consists
24 of allegations describing communications or conduct which do not

25 _____
26 ³ The contrast between Armstrong's argument that his claims of
27 supposed "bad acts" dating back to 1986 are alleged only to
28 "provide context," and his devotion of eight pages of his
opposition to describing this "context," make plain that the real
purpose behind Armstrong's pleading, and his opposition herein, is
to engender hatred and ill will toward the Church.

1 describe actionable conduct because they are (1) barred by the
2 statute of limitations, (2) absolutely privileged under well-
3 established California law, or (3) both.

4 As noted in Part II, supra, those portions of the complaint
5 which describe matters that are beyond the scope of the statute of
6 limitations are also completely duplicative of allegations contained
7 in the cross-complaint which Armstrong is attempting to pursue in the
8 Los Angeles action. They comprise the bulk of the first amended
9 cross-complaint, and allege, generally, Armstrong's dissatisfaction
10 with his 1986 agreement to accept a large monetary amount in
11 settlement of litigation in exchange, inter alia, for a promise that
12 he would neither publicize his claimed Scientology experiences nor
13 voluntarily seek to aid would-be litigants against the settling
14 Church and related entities. According to Armstrong, their
15 "gravamen" is that Church attorneys purportedly "subverted"
16 Armstrong's attorney, who then, presumably, "subverted" Armstrong
17 himself into signing the agreement.⁴

18 Armstrong attempts to justify his interjection of these old
19

20 ⁴ It should be noted that even if these claims were not barred by
21 their duplicative nature and the statute of limitations,
22 Armstrong's allegations that the Church's lawyers impermissibly
23 pressured his lawyer into agreeing to settle the earlier litigation
24 would nonetheless be barred by the absolute privilege afforded by
25 Civil Code §42(b)(2). Rosenthal v. Irell & Manella (1982) 135
26 Cal.App.3d 121, 126-128, 185 Cal.Rptr. 92, 95-96 (Claimed
27 inducement of insurers to settle action without permission of
28 insured was privileged communication); Asia Investment Co., Ltd. v.
Borowski (1982) 133 Cal.App.3d 832, 842-843 (Claim that party filed
an environmental action and used it to threaten plaintiff in an
attempt to get him to settle main action sought relief for
communications which were absolutely privileged). Indeed, in Asia
Investment, the court noted that "there is an element of coercion
present in every lawsuit," and that "[s]ettlement of disputes has
long been favored by the courts and attorneys should be accorded
wide latitude in making statements during settlement negotiations."
Id. at 843.

1 claims into this action by contending that the Court "could" impose
2 liability for these stale claims on a 'continuing tort' theory.
3 [Oppo. at 8-9] He provides no relevant or current law for this
4 theory, because none exists. The cases which he cites for this
5 remarkable proposition are federal cases which involved a continuous
6 course of conduct that resulted in an accumulated physical injury --
7 allegedly improper drug therapy provided by the Veteran's
8 Administration over the course of 19 years, causing severe mental and
9 physical injury (Page v. United States (D.C.Cir. 1984) 729 F.2d 818),
10 and allegedly requiring the plaintiff to operate an air hammer which
11 repeatedly "jolted" his shoulders over the years, causing a gradual
12 onset of arthritis (Fowkes v. Pennsylvania R.R. Co. (3d Cir. 1959)
13 264 F.2d 397. The theory is not applicable to a claim of abuse of
14 process, and plaintiff is unable to locate any California court that
15 has ever held otherwise.

16 As for the remaining allegations, no amount of rhetoric can
17 change the simple truth that Armstrong is complaining that the Church
18 has abused process by suing him for fraudulently conveying away his
19 property to avoid paying an anticipated judgment for breach of
20 contract. However, "the mere filing or maintenance of a lawsuit -
21 even for an improper purpose - is not a proper basis for an abuse of
22 process action." Oren Royal Oaks Venture v. Greenberg, Bernhard,
23 Weiss & Karma, Inc. (1986) 42 Cal.3d 1157, 1169, 232 Cal.Rptr. 567,
24 574.

25 Armstrong argues that the complaint herein was filed for the
26 improper motive of "destroying" and "making an example" of him, so
27 that he will not provide testimony in judicial proceedings. Such an
28 allegation deliberately misstates the terms of the settlement

1 agreement, in an effort to inflame the Court.⁵ However, even if this
2 asserted motive is assumed to be true, it does not serve to avoid the
3 absolute protection afforded by Civil Code § 47(b). For over eighty
4 years, it has been the law in California that "the defendant's malice
5 or bad faith does not affect the privileged character of the [47(b)]
6 publication." Gosewisch v. Doran (1911) 161 Cal. 511, 514, 199 P.
7 656.

8 This principle has been applied very recently to abuse of
9 process claims. In Oren Royal Oaks, supra, the plaintiff claimed
10 that the defendants instituted an action under the California
11 Environmental Quality Act "for the purpose of coercing a monetary
12 settlement rather than to further environmental concerns." This
13 claimed improper motive was held to be irrelevant: the mere filing or
14 maintaining of a lawsuit simply cannot give rise to a claim for abuse
15 of process.

16 Similarly, in Abraham v. Lancaster Community Hospital (1990) 217
17 Cal.App.3d 796, 266 Cal.Rptr. 360, the plaintiff brought a claim for
18 abuse of process, asserting that he had been named in a federal
19 action by the defendant, accused of criminal acts, and that the
20 complaint had been given to the media and the actions republished,
21 all with the improper motive of having him fired from his job, and
22 thus removed as a competitor with defendant. The superior court
23 dismissed plaintiff's complaint, and the Court of Appeal affirmed,
24

25 ⁵ This Court may take judicial notice of the settlement agreement
26 and its relevant paragraphs 7G and 7H, Exhibit A to the first
27 amended complaint in the Los Angeles Action, Exhibit 1 to
28 Plaintiff's Second Request for Judicial Notice. Armstrong agreed
in 1986 that he would not voluntarily assist litigants; he did not
agree that he would not testify if subpoenaed, nor did plaintiff
request that he do so.

1 finding that,

2 Along with the plain meaning of the statute and its
3 legislative history, decisions of the Supreme Court . . .
4 make it clear that, except for an action for malicious
5 prosecution, the privilege under section 47, subdivision
6 (2) [now (b)] is absolute and unaffected by malice; the
7 publication need only have a reasonable relation to the
8 judicial proceeding in which it is made.

9 217 Cal.App.3d at 815 (citations omitted).

10 Further, in Warren v. Wasserman, Comden & Casselman (1990) 220
11 Cal.App.3d 1297, 271 Cal.Rptr. 579, the plaintiff alleged that the
12 defendant had filed and litigated a cross-complaint against him which
13 he knew was groundless in an effort to coerce a collateral advantage
14 in the underlying action. The trial court sustained defendant's
15 demurrer to the abuse of process claim, and the Court of Appeal
16 affirmed, citing to Oren Royal Oaks, supra.

17 All of these cases, none of them mentioned by Armstrong, and
18 none of them distinguishable from the instant case, demonstrate that
19 the conduct of which Armstrong complains is privileged.⁶ Under these
20 circumstances, demurrer must be sustained.

21 IV.

22 **NO DECLARATORY RELIEF IS AVAILABLE TO ARMSTRONG** 23 **IN THIS FRAUDULENT CONVEYANCE ACTION**

24 Armstrong apparently does not dispute that his request for

25 ⁶ Armstrong also raises a confusing argument concerning
26 allegations in the Church's amended complaint against Armstrong in
27 the Los Angeles action. This exercise in illogic insults the
28 Court, and wastes its time. Armstrong has not alleged, nor can he,
that the Church "destroyed" any physical evidence at all. Indeed,
even in making this bizarre argument, all he asserts is that the
Church sued him for breach of contract because he voluntarily
provided a declaration to litigants against the Church, an action
which he agreed in 1986 not to do, was paid \$800,000 to refrain
from doing, and which the Los Angeles Superior court enjoined him
from doing on May 28, 1992. [Ex. 2 to Second Request for Judicial
Notice]

1 declaratory relief as to his "status" as a debtor fails to state a
2 cause of action and should be dismissed. However, he asserts,
3 without argument, evidence or support, that declaratory relief as to
4 the settlement contract is "imperative." [Oppo. at 15]

5 Such an assertion, like Armstrong's cross-complaint, is
6 insufficient. "The declaratory relief statute should not be used for
7 the purpose of anticipating and determining an issue which can be
8 determined in the main action. The object of the statute is to
9 afford a new form of relief where needed and not to furnish a
10 litigant with a second cause of action for the determination of
11 identical issues." California Insurance Guarantee Association v.
12 Superior Court (1991) 231 Cal.App.3d 1617, 1624, 283 Cal.Rptr. 104,
13 108, quoting General of America Ins. Co. v. Lilly (1968) 258
14 Cal.App.2d 465, 470, 65 Cal.Rptr. 750.

15 Here, each of Armstrong's requested "declarations," including a
16 declaration as to the contract, is already an issue which will be
17 determined by a previously existing action between the parties. In
18 the first action presently pending in Los Angeles, the Church is
19 attempting to obtain damages from Armstrong for breach of the
20 settlement contract, and to enforce it by injunction. [First Amended
21 Complaint, Ex. 1 to Second Request for Judicial Notice.] Indeed, the
22 Los Angeles Superior Court has already issued a preliminary
23 injunction enforcing certain provisions of the contract. [Ex. 2 to
24 Second Request for Judicial Notice.] In that action, Armstrong has
25 asserted, by answer and by affirmative defense, that the settlement
26 contract is illegal and unenforceable. [Ex. 3 to Second Request for
27 Judicial Notice.] That question, then, is already awaiting
28 determination by the Los Angeles Superior Court, and may not become

1 the subject of a declaratory relief action here. E.g., California
2 Insurance Guarantee, supra (Declaratory relief action by insurer
3 properly stayed pending determination of liability issues in
4 underlying action).

5 Under these circumstances, declaratory relief is neither
6 necessary nor proper, and plaintiff's demurrer should be sustained.

7 V.

8 **DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND**

9 A demurrer should be sustained without leave to amend "if it
10 appears from the complaint that under applicable substantive law
11 there is no reasonable possibility that an amendment could cure the
12 complaint's defects." Heckendorn v. City of San Marino (1986) 42
13 Cal.3d 481, 486, 723 P.2d 64, 229 Cal.Rptr. 324, 327. It is
14 appropriate to sustain a demurrer without leave to amend if it is
15 apparent from the pleadings that the stated claims are barred by the
16 statute of limitations. CAMSI IV v. Hunter Technology Corp. (1991)
17 230 Cal.App.3d 1525, 1529, 282 Cal.Rptr. 80, 82. Indeed, the
18 plaintiff (or cross-complainant) bears the burden of showing that
19 there is a reasonable possibility that the defect in a complaint (or
20 cross-complaint) can be cured. Blank v. Kirwan (1985) 39 Cal.3d 311,
21 318, 216 Cal.Rptr. 718, 721-22.

22 Here, the Church has conclusively demonstrated that (1) all of
23 the allegations contained in the cross-complaint, with the exception
24 of two paragraphs, specifically allege discrete events which are
25 claimed to have occurred beyond the applicable statute of
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1 limitations,⁷ and (2) the remaining paragraphs allege actions which
2 are absolutely privileged under California Civil Code Section 47, and
3 cannot represent any element of a claim for abuse of process.
4 Further, the Church has shown, by records of which this Court can
5 take judicial notice, that the two actions alleged to have occurred
6 later than the statute amounted to the filing of complaints in two
7 actions which are still pending, one in Los Angeles County Superior
8 Court and one in this Court. Armstrong is therefore unable, as a
9 matter of law, to convert his claim to an action for malicious
10 prosecution.

11 **CONCLUSION**

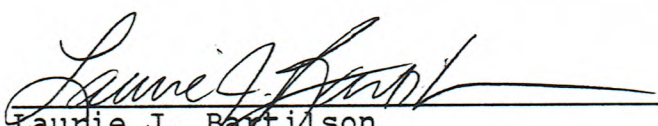
12 Armstrong's opposition to plaintiff's well-reasoned demurrer is
13 long on rhetoric and short on logic. California authority and common
14 sense dictate that demurrer be sustained, and that Armstrong be given
15 no further opportunity to amend the cross-complaint.

16 Dated: March 23, 1994

Respectfully submitted,

17 BOWLES & MOXON

18
19 By:


Laurie J. Bartilson

20 Andrew H. Wilson
21 WILSON, RYAN & CAMPILONGO

22 Attorneys for Plaintiff and Cross-
23 Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL

24 ARMFRAUD\REPLY2.DEM

25
26 _____
27 ⁷ The applicable statute of limitations is the one-year statute
28 of limitations pursuant to Code of Civil Procedure Section 340.
Thornton v. Rhoden (1966) 245 Cal.App.2d 80, 95, 53 Cal.Rptr. 706,
717.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On March 23, 1994 I served the foregoing document described as REPLY IN SUPPORT OF CHURCH OF SCIENTOLOGY INTERNATIONAL'S DEMURRER AND MOTION TO STRIKE GERALD ARMSTRONG'S CROSS-COMPLAINT on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE **VIA TELEFAX & U.S. MAIL**
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on March 23, 1994 at Los Angeles, California.

[] **** (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

[] ****** Such envelopes were hand delivered by Messenger Service

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name

Signature

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